FILED
JAN 23 1956
HAROLD B. WILLEY, C

No. 604

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

REYNOLDS METALS COMPANY,
Petitioner,
vs.
MULTNOMAH COUNTY, TERRY D. SCHRUNK, as Sheriff and Tax Collector of Multnomah County, WILEY W. SMITH, as Assessor of Multnomah County, and SI COHN, as County Clerk of Multnomah County,
Respondents.

On Petition for Writ of Certiorari to the Supreme Court of the State of Oregon.

BRIEF FOR RESPONDENT IN OPPOSITION

ROBERT F. MAGUIRE,
723 Pittock Block,
Portland 5, Oregon,
BERNARD SHEVACH,
723 Pittock Block,
Portland 5, Oregon,
Counsel for Respondents.

HOUGHTON-CARSON COMPANY, PRINTERS

INDEX

Brief for Respondent in Opposition

	Page
A. Opinions Below	1
B. Jurisdiction	2
C. Question Presented	2
D. The Constitutional Provisions Involved	3
E. Statement of the Case	3
F. Argument	7
I. There is no constitutional issue to be decided in this case and there is no important question of federal law	7
II. There is no conflict in the decision of the Oregon Supreme Court with the Parr-Richmond case	10
III. The lower Court's decision is correct	15
Conclusion	21
Appendix A	
Stipulation	23
Appendix B	
Findings of Fact and Conclusions of Law	29

Cases

Land O'Lakes Dairy Co. v. Wadena County, 229 Minn. 263, 39 N.W. 2d 164, affirmed *per curiam*, 338 U.S. 897, 70 S. Ct. 251, 94 L. Ed. 552 ..... 8, 9

Oklahoma Tax Commission v. Texas Co., 336 U.S. 342, 69 S. Ct. 561, 93 L. Ed. 721 8

Parr-Richmond Industrial Corporation v. Boyd, 43 Cal. 2d 157, 272 P. 2d 16 (1954) 10, 12, 13, 14

S.R.A., Inc., v. Minnesota, 327 U.S. 558, 66 S. Ct. 749, 90 L. Ed. 851 (1946) 2, 7, 8, 9, 10, 15, 16

Statutes

62 Stat. 929, 28 U.S.C., Section 1257 (3) 2

No. 604

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

REYNOLDS METALS COMPANY,
Petitioner,

vs.

MULTNOMAH COUNTY, TERRY D. SCHRUNK, as Sheriff and Tax Collector of Multnomah County, WILEY W. SMITH, as Assessor of Multnomah County, and SI COHN, as County Clerk of Multnomah County,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of the State of Oregon.

BRIEF FOR RESPONDENT IN OPPOSITION

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

OPINIONS BELOW

The opinions below are adequately set forth in the Petition. (Petition p. 2; App. B of Petition, pp. 42-56; App. C of Petition, pp. 57-73).

JURISDICTION

Petitioner alleges that this Court has jurisdiction to review the above decree on the basis of the statutory provision contained in 62 Stat. 929, 28 U.S.C. Section 1257 (3). Respondent will contend, on the subsequent argument, that this Court has no jurisdiction to grant certiorari in that the federal question sought to be raised is insubstantial, having been foreclosed by prior decisions of this Court.

QUESTION PRESENTED

The questions presented for review are two-fold:

A. In *S.R.A., Inc. v. Minnesota,* 327 U.S. 558, 66 S. Ct. 749, 90 L. Ed. 851 (1946) this Court established as definitive constitutional doctrine that property to which the United States holds legal title may be subjected to local ad valorem taxation provided ownership of the beneficial interest has passed to a taxable entity. The first question relates solely to the construction of a contract, entered into between the United States and Reynolds Aluminum Company (called the Company herein) in order to determine whether, by its terms and the attendant facts of the case, the Company became the owner as of January 1, 1950 of the beneficial interest in property to which the United States held legal title. This question, relating to the interpretation of a contract, presents no federal constitutional issue of any kind, since concededly the property may be

locally taxed ad valorem if the contract caused the Company to be its beneficial owner as of January 1, 1950.

B. The contract between the United States and the Company stated that title to the property of the United States would be conveyed by deed of conveyance and bill or bills of sale, effective as of July 1, 1949 (Petition p. 24), and the Oregon Supreme Court in its Opinion found that the instruments transferring title executed June 29, 1950, provided specifically that legal title should vest in the Company as of July 1, 1949 (Petition pp. 71-72). The second question is whether the Company acquired legal title to the property prior to the relevant date for determining assessability and taxability, namely, January 1, 1950. If the Company were the legal owner prior to January 1, 1950, it is obvious that the property would be taxable as no federal interest would then exist.

THE CONSTITUTIONAL PROVISIONS INVOLVED

The constitutional provisions are adequately set forth in the Petition (Petition pp. 3-4).

STATEMENT OF THE CASE

On December 21, 1949, the United States Government through the General Services Administration (called the Seller herein), entered into an agreement (called the contract herein) with the Company

covering the sale to the Company of an aluminum reduction plant together with the machinery and equipment therein located at Troutdale, Oregon, in the County of Multnomah (Petition pp. 21-41).

The contract specifically provided that a pre-existing lease between the Petitioner herein and the Seller would terminate upon the acceptance of the contract, and that the termination would be effective as of July 1, 1949 (Petition pp. 40, 68). The new lessee on December 21, 1949 was the Petitioner and the new lessor was the Company (Petition pp. 23, 50; App. A pp. 25-27). Thus, the Company, as lessor, was in possession of the plant on and before January 1, 1950 (Petition pp. 68-69, 70; App. B p. 33). The exclusiveness of the Company's possession was manifested by the fact that the Seller felt it necessary to specifically reserve in the contract a right in itself of ingress to and egress from the premises sold (Petition pp. 36, 70).

The contract provided for a down payment in the amount of $2,581,958.00 on the date of the contract execution for application on the total consideration of $50,081,958.00 (Petition p. 22), and further provided that if the plant were damaged or destroyed by any cause after July 1, 1949, the Company would still be obligated to pay the remaining unpaid balance of the purchase price (Petition pp. 28, 70). Thus, as of January 1, 1950, the Company

would have a risk of loss to the extent of the $47,500,000.00 yet unpaid on the principal amount of the contract.

The contract additionally provided that the Company was responsible for all insurance coverage, taxes, maintenance, costs and other expenses from and after July 1, 1949 and as of January 1, 1950 (Petition p. 64); that the Seller was to make available for the Company's inspection such title papers as the Seller possessed regarding the plant, but that the Seller had no obligation to furnish title reports or title insurance or pay for any title expenses (Petition p. 26).

The contract stated that the sale should include all rights, title and interest of the Seller in and to the plant without warranty of title, either express or implied (Petition p. 27). It further provided that title to the plants would be conveyed by deed of conveyance and by bill or bills of sale effective as of July 1, 1949 (Petition p. 24).

Further provision was made that if a title examination were instituted after acceptance of the contract and *prior to delivery of the deeds* and defects were revealed which the Company reasonably regarded as rendering the title unmarketable, then the Company might, at its option, rescind the contract unless the Seller cured the defect sixty days after notice from the Company (Petition pp. 26-27).

Petitioner in its "Statement of the Case" has erroneously stated that the Company could rescind the contract "if within 90 days after receipt of the Government's title evidence the Government's titles were found to contain defects" (Petition pp. 5, 6). The fact is that the Company could exercise its option to rescind only prior to deed delivery; provided, however, that if deed delivery were delayed more than ninety days after receipt by the Company of such title evidence as the Seller could deliver, the Company's option to rescind would expire even though the deed had not been delivered. Accordingly, the ultimate date on which an election to rescind could be made was at some time prior to deed delivery. The contract does not state that deed delivery shall be delayed until a title examination is made, and thus permits the Seller to deliver the deed before any examination might have been made.

With regard to the National Security clause, it is to be noted that the Company only had an option to rescind the sales agreement if satisfactory agreement with the Government were not reached (Petition pp. 24-25).

The Circuit Court of the State of Oregon for the County of Multnomah upheld the respondent's contention that the plant was subject to assessment and taxation as of January 1, 1950 (Petition App. B pp. 42-56). The Supreme Court of the State of Ore-

gon affirmed the decree of the Circuit Court, stating that:

> "On January 1, 1950, at 1 A.M., plaintiff (the Company) at the very least was the equitable owner of all the property involved in this litigation *and was in actual and exclusive possession of the whole thereof.*"

ARGUMENT

I.

There is no constitutional issue to be decided in this case and there is no important question of federal law.

The issue as to the taxability of the property herein involved is dependent solely upon the construction to be accorded the contract between the Seller and the Company. If the contract is deemed to pass beneficial ownership to the Company, concededly the property may be taxed by virtue of the decision in *S.R.A., Inc. v. Minnesota,* supra, which holds that a state may constitutionally tax property to which the United States holds legal title, provided that a taxable entity is the beneficial owner thereof. Hence there is no constitutional issue posed for decision; there is only a contract to be construed in the light of the facts of the case.

It is patent that construing this particular contract in the light of the facts of this particular case can have a relevance only to the Seller and the Company since it is highly improbable that identical contracts, surrounded by the identical facts of this

case, will recur among other parties. Thus a construction of this contract would not only be irrelevant to any principle of constitutional law but also would be devoid of any significance as a precedent of generalized value. Contract litigation would continue, and a review by this Court of this case would resolve no issue other than an interpretation of this one contract.

Additionally, this Court should decline jurisdiction on the basis that no substantial federal question has been raised in the state court proceedings in that the question of a proper interpretation of the contract has been sufficiently foreclosed by prior decisions of this Court as to leave no real room for controversy. In essence, Petitioner contends that taxation was erroneous while alleged conditions of the Company's purchase obligation, relating to a marketable title and a national Security clause, were unfulfilled. Respondent denies the accuracy of Petitioner's assertion; but assuming it to be true, taxability of the property is still proper on the basis of the case of *Land O'Lakes Dairy Co. v. Wadena County,* 39 N.W. 2d 164, affirmed *per curiam* in 338 U.S. 897, citing, without opinion, *S.R.A., Inc. v. Minnesota,* supra, and *Oklahoma Tax Commission v. Texas Co.,* 336 U.S. 342. In that case the United States held title to the property as mortgagee and the Dairy was the mortgagor. Ad valorem taxation of the property by the State of Minnesota was upheld by

the State Court even though a contract between the parties provided that title should revert to the Dairy on payment of a set purchase price *only after the President of the United States had declared the property to be no longer needed for defense purposes, and even though on the tax date in question, the President had not so declared.* This Court affirmed the decision. It is manifest that in the Land o'Lakes case not only the obligation to purchase the property but the right to do so was subject to an unfulfilled condition at the tax date. Additionally, the case of *S.R.A., Inc. v. Minnesota,* supra, held that a state might tax property to which the United States held title though there exist conditions yet to be fulfilled under the contract of sale prior to the passage of title. Based on these past decisions of this Court, it is clear that no substantial federal question relating to the matter of the construction and effect of the contract between the Seller and the Company is submitted by Petitioner.

Respondent also contends that this case can be decided on the basis that legal title to the property passed to the Company before January 1, 1950 in that the contract provided for such passage as of July 1, 1949 (Petition p. 24) and in that the deed transferring title, executed on June 29, 1950, specifically provided that legal title should vest in the Company as of July 1, 1949 (Petition pp. 71, 72). Accordingly, since this contention could serve to

sustain taxability, it might never be necessary to decide whether the contract created a beneficial ownership in the Company, and thus a review of this case would not at all necessarily involve even an interpretation of the contract between the Seller and the Company.

In answer to the suggestion that taxation should be foregone lest the efforts of the government to make advantageous sales of its properties be impeded (Petition p. 10) this Court has stated in *S.R.A., Inc. v. Minnesota,* supra, the following:

> "Our recent cases have disposed of this economic argument in a way which is contrary to petitioner's contention."

II.

There is no conflict in the decision of the Oregon Supreme Court with the Parr-Richmond case.

The allegation that there is a conflict in decision between the Reynolds case and the case of *Parr-Richmond Industrial Corporation v. Boyd,* 43 Cal. 2d 157, 272 P. (2d) 16 (1954) cannot be substantiated. The facts of the Parr-Richmond case are in all respects substantively different and hence the opinion therein is in no respect pertinent to the Reynolds case.

In the *Parr-Richmond* case, the prospective buyer (called Parr herein) of shipyard property from the United States knew, even before entering

its bid, that the title to the property was unmerchantable (Petition p. 85). Since Parr desired to sell or lease the erstwhile shipyard site for industrial development, a merchantable title was an indispensable requisite of Parr's intended purchase (Petition p. 79) and the consummation of the whole transaction centered on the acquisition of a merchantable title (Petition pp. 86, 87). Accordingly, by its bid of purchase, Parr agreed to buy the property only if, as and when the government could convey a good and merchantable title (Petition p. 80) and Parr had no obligation to purchase the property unless and until the condition of good and merchantable title were met. Parr made an escrow payment for the property with instructions to the escrow depository that the money was not to be paid to the United States unless there were first delivered to the escrow depository a deed conveying merchantable title (Petition p. 78).

On the asserted ad valorem assessment dates, there were clouds, encumbrances and adverse claims upon the title to the property which rendered the title unmerchantable (Petition p. 80).

Based on the above set of facts, the California Court found that Parr had neither legal nor equitable ownership on the assessment dates by reason of the fact that the Government did not then have the merchantable title it agreed to convey, and

Parr, as a consequence thereof, had no obligation to buy the property.

To analogize and render apposite the *Parr-Richmond* case to the *Reynolds* case, the following three unfounded assumptions would have to be indulged:

1. That the obligation of the Seller was to convey a marketable, unencumbered title;

2. That the Company had no duty to perform unless the Seller could convey a marketable, unencumbered title; and

3. That as of the assessment date, namely, January 1, 1950, the Company had no obligation to perform because the Seller in fact did not have the title it agreed to convey.

The first assumption of analogy is erroneous in that in the *Reynolds* case the Seller did not agree to convey a marketable title but only obligated itself to make a quitclaim conveyance without any warranty of title of any kind, either express or implied (Petition pp. 27, 64, 68).

The second assumption of analogy is erroneous in that the conveyance of a marketable title was in no sense a condition precedent of the Company's obligation to perform. The fact is that under the contract there was no duty on the part of anyone to make a title examination (Petition p. 67). The contract simply provided that *in the event the* Com-

pany undertook a title examination and in the further event that an unmarketable title was revealed *before deed delivery,* the Company had an option to rescind if the defects were not cured (Petition pp. 26, 27). If the revelation of an unmarketable title were not made before deed delivery, the option to rescind on this ground expired. Furthermore, there was in the contract no obligation of any kind on the Seller's part to delay deed delivery, and no right on the Company's part to refuse deed delivery unless and until an examination were made. The Company clearly had an obligation to perform even though no title examination at all were made. Therefore inasmuch as a condition precedent is a fact which *must exist or occur* before a duty of performance of a promise arises, it cannot be contended that a condition precedent to the Company's obligation to perform consisted of a finding of marketable title. This view is completely consonant with the dominant fact that the Seller did not purport to sell a marketable title but only its right, title, and interest in the property without warranty of title, either express or implied. Thus on the assessment date in the Reynolds case, a binding obligation to buy and sell property existed, whereas in the *Parr-Richmond* case no purchase or sale obligation was in effect at all on the assessment dates. As the Oregon Supreme Court stated, "At most, the provision respecting the right to rescind for defective title was a condition

subsequent, and in no way affected the legal status of the parties at the time the contract was executed" (Petition p. 68). The provision regarding a National Security clause (Petition p. 24) was also a condition subsequent, merely giving an option to rescind (Petition p. 68).

The third assumption of analogy is erroneous in that the Seller always had the title it agreed to convey to the Company. The record contains not one shred of evidence to the contrary, and the Oregon Supreme Court noted that the title of the government proved to be good so that the occasion for exercising the option to rescind never arose (Petition p. 68).

Hence, it is clear that the basic reasons for not finding equitable ownership in the *Parr-Richmond* case arose from a contract and attendant facts which do not bear even a semblance of relationship to the contract and attendant facts of the *Reynolds* case. There is, accordingly, no possibility of a conflict in decision. These are simply two entirely different cases.

There is patently no conflict in principle between the two cases in that in the *Parr-Richmond* case the California Court held that Parr could not be the equitable owner on the assessment dates since the government at said times did not have that which it contracted to convey, namely, a marketable title

(Petition p. 88), whereas in the *Reynolds* case, the subject of sale did exist on January 1, 1950, and a binding sale and purchase obligation was in effect between the parties.

THE LOWER COURT'S DECISION IS CORRECT

In the case of *S.R.A., Inc. v. Minnesota,* supra, this Court categorically rejected former constitutional doctrine which provided that property to which the United States held legal title and which was the subject of sale to a taxable buyer, was immunized from local ad valorem taxability until all conditions precedent to the buyer's right to demand a deed had been fulfilled. One of the unfulfilled conditions to deed delivery in the *S.R.A.* case was the nonpayment in full of the purchase price; however, this Court held the property taxable, stating:

> "To say that the payment of the purchase price is a necessary condition precedent to the loss of federal immunity is to make the rule too mechanical. *It should be sufficiently flexible to subject real private rights, disentangled from federal policies,* to state taxation." (Italics ours).

Obviously this Court reasoned that the buyer, who was in full possession of the property with the right of use, should not escape taxation as to these real private rights which in fact made it the beneficial owner of the property.

In the *Reynolds* case, the Company as of January 1, 1950, had all of the real private rights which this Court found decisive in the *S.R.A.* case. The Company was in actual and exclusive possession and control of the entire property, using it for the Company's own business purposes (Petition p. 70; App. B p. 33); the Company bore the complete risk of loss to the property, was responsible for all insurance coverage, taxes, maintenance, costs and other expenses incurred in connection with the property; the Company had made a non-escrowed down payment in the amount of $2,581,958.00; the Company was the beneficiary of locally tax supported services rendered by the taxing districts in which it was and is located. Thus all of the substantial attributes of ownership were vested in the Company as of January 1, 1950. To exempt this property from taxation would make a vain and inglorious mockery of the basic premise of the *S.R.A.* case, namely, that real private rights of property should be taxed for the support of government. The fact of nominal legal title in the government of the United States cannot be allowed to obscure the fact of substantive ownership in the Company.

Indeed, taxation in the *Reynolds* case can be predicated not only upon equitable or beneficial ownership, but also upon the basis that the Company had the full legal title prior to and on January 1, 1950, as well as the equitable ownership. The contract

provided that title to the property should be conveyed by deed effective as of July 1, 1949 (Petition p. 24), and the deed which was executed on June 29, 1950, specifically provided that title should vest in the Company as of July 1, 1949 (Petition pp. 71, 72). Thus, under well-established principles of law, legal title to the property related back to, and vested in the Company as of July 1, 1949 (See supporting authorities cited in Petition, p. 72). In this regard, it is revealing to note that the Company and the Petitioner both stated, *more than three months prior to the execution of the deed and mortgage provided for in the contract,* that the Company was the *owner* of the property as of July 1, 1949 (App. A p. 25; Petition p. 69). It is also revealing to note that the contract gave substance and authority to the Company's claim of ownership before January 1, 1950, by using language importing an executed sale. It stated that the Seller "hereby sells" to the Company, and the Company "hereby buys" the Troutdale plant (Petition p. 21); it referred to the plant as "property hereby sold" (Petition pp. 22, 24); it spoke of "this sale" (Petition p. 27); and it alluded to "this sales agreement" (Petition p. 29). Significantly, the contract also provided that the down payment was to bear interest from July 1, 1949 (Petition p. 22); that risk of loss, maintenance, costs and other expenses should be born by the Company from July 1, 1949 (Petition pp. 27, 28); and that the

leasing and rental of the property by Petitioner from the Company as lessor should commence on July 1, 1949. Thus the Company can say it did not have the legal and beneficial title to the plant prior to and on January 1, 1950, only by ignoring the relevant principles of law, by repudiating the contract it signed and the deed it accepted, and by contradicting its own statement and position that it became the plant owner as of July 1, 1949.

The basic premise of the Petitioner, namely, that the Company was neither the equitable nor legal owner of the property because of an assumed "conditional" purchase obligation under a brief "holding agreement" is in error. There were no conditions precedent of any kind to the purchase obligation of the Company. The Seller sold only its right, title and interest to the property without warranty of title either express or implied, and the Company accepted the contract on this basis. The Company's obligation under the contract was viable and perfected in all respects as of January 1, 1950; it only had an *option to rescind* on a finding of defective, unmarketable title prior to deed delivery or in the event a National Security Clause satisfactory to it was not obtained within 120 days or a mutually agreed upon longer period (Petition pp. 24, 26, 27). As the Oregon Supreme Court held:

> "At most, the provision respecting the right to rescind for defective title was a condition

> subsequent, and in no way affected the legal status of the parties at the time the contract was executed . . . What we have said respecting the right to rescind for defective title applies with equal force to the provision regarding a National Security Clause . . . " (Petition p. 68).

It is, of course, interesting to observe that, although Petitioner argues fervently about the possibilities that title *might* have been faulty, the fact is that the record reveals not even a remote suggestion that the title was ever in fact faulty.

Thus the nub of Petitioner's argument appears to be that the property may not be taxed because the purchase obligation could have been subject to defeasance by the happening of subsequent events. If this proposition were accepted, it would follow that there could be no equitable ownership of property to which the United States held legal title, and no local taxation thereof in any case where the contract of purchase might be rescinded. Since virtually any contractual obligation may be subjected to rescission on the basis of fraud, mistake, impossibility, failure substantially to perform or other failure of consideration, an adoption of Petitioner's argument would mean not only an elimination of established concepts of equitable ownership but also a complete elimination of the power of local government to tax property unless and until legal title passed. Hence if Petitioner prevailed, the constitu-

tional doctrine of the *S.R.A.* case would be overruled and rejected; no longer would possession, use, and benefit of and from property determine the issue of taxability, but rather the sterile fact of who held nominal, legal title would control.

The argument that the contract is a kind of temporary holding agreement is completely devoid of merit inasmuch as the contract sets forth with remarkable particularity all of the finest details governing every aspect of the mortagage (Petition pp. 25, 26, 28, 38, 39), together with the insurance provisions to be incorporated (Petition p. 28), the method and media of payment (Petition pp. 32, 33, 34, 35), the terms of payment and opportunity for prepayment (Petition p. 23), the nature of the deed (Petition p. 27), and all of the previously mentioned terms relating to easements of ingress and egress, leases, title reports, recording fees, payment of documentary stamp taxes, risk of loss, taxes, maintenance, costs, and other matters. This was the final and definitive agreement governing the transaction. In fact, the record reveals none other.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should not be granted.

Respectfully submitted,

ROBERT F. MAGUIRE,
723 Pittock Block,
Portland 5, Oregon,

BERNARD SHEVACH,
723 Pittock Block,
Portland 5, Oregon,
Counsel for Respondents.

APPENDIX A

STIPULATION

Plaintiff and defendants Multnomah County, Terry D. Shrunk, as Sheriff and Tax Collector of Multnomah County, Wiley W. Smith, as Assessor of Multnomah County, and Si Cohn, as County Clerk of Multnomah County, by and through their respective attorneys, stipulate as follows.

I.

The following facts are stipulated and agreed to:

1. The property which is the subject of this litigation, and which the defendants are seeking to add to the 1950 assessment roll, and to tax as personal property, consists of machinery and equipment used in the manufacture of raw or partially manufactured products. Said property is referred to in the complaint as "the Troutdale machinery and equipment."

2. The down payment referred to in Paragraph VI of the complaint and in Paragraph (1) of the Letter of Intent, in the sum of $2,581,958.00, was made in the following manner:

Payment required		$2,581,958.00
Less:		
Credit for rentals paid	$1,318,444.58	
Offset—balance owing for rehabilitation Jones Mills, Arkansas, plant	$ 246,169.02	
Balance due		$1,017,344.40
Plus interest to December 21, 1949		19,399.23
Balance		$1,036,743.63
Payments:		
By check dated and delivered 12-21-49	$ 476,743.63	
Invoice for aluminum pig	$ 560,000.00	$1,036,743.63

The above check dated 12/21/49, in the sum of $476,743.63, was drawn by Reynolds Metals Company and delivered to General Services Administration on December 21, 1949. The above invoice for aluminum pig in the sum of $560,000.00 was Invoice No. 35-12-22, dated December 21, 1949, and was issued and mailed by Reynolds Metals Company to General Services Administration on December 21, 1949; said invoice covered 3,500,000 pounds at .16¢ per pound. The said 3,500,000 pounds of aluminum was segregated and stored at Troutdale on December 21, 1949, in accordance with the above invoice, pending receipt of shipping instructions from the Government, and was shipped from Troutdale in accordance with instructions subsequently received from the Government, in various shipments beginning on February 10, 1950, and completed on May 29, 1950.

4. On March 3, 1950, Reynolds Aluminum Company signed and delivered a letter to Reynolds Metals Company, and on or about the same date the said letter was accepted by Reynolds Metals Company, as follows:

March 3, 1950

Reynolds Metals Company
Reynolds Metals Building
Third and Grace Streets
Richmond, Virginia

Gentlemen:

By agreement with the United States, acting through General Services Administration, Reynolds Aluminum Company became the owner as of July 1, 1949 of the four Government plants at Hurricane Creek, Arkansas, Jones Mills, Arkansas, Troutdale, Oregon, and McCook, Illinois. Similarly, this Company became the owner of the plants at Grand Rapids, Michigan, as of April 1, 1949, and it became the owner of the plant at Phoenix, Arizona, as of December 31, 1949.

Reynolds Metals Company, hereinafter called "Metals", was, prior to July 1, 1949, in possession, and has been since July 1, 1949 in continuous possession, of the plants at Hurricane Creek, Arkansas, Jones Mills, Arkansas, Troutdale, Oregon, and McCook, Illinois. It was, prior to April 1, 1949, in possession, and has been since April 1, 1949 in

continuous possession, of the plant at Grand Rapids, Michigan. It was, prior to December 31, 1949, in possession, and has been since December 31, 1949, in continuous possession of the plant at Phoenix, Arizona.

This will confirm the fact that this Company and Metals have agreed on annual rentals for the six (6) plants as follows:

Plants	Annual Rental
Hurricane Creek	$1,312,000
Jones Mills	1,006,000
Troutdale	708,000
McCook	1,474,000
Phoenix	528,000
Grand Rapids	150,000

Since the plant at Grand Rapids was, prior to April 1, 1949, in an idle status, and has been in such an idle status during the period from April 1, 1949 to the date of this letter, the rent for that plant for the period from April 1, 1949 to the date of this letter shall be at the rate of $128,000 annually. This reduced rental shall remain in effect until the plant is engaged in manufacturing operations.

Metals is leasing each of these six (6) plants for a period of twenty-five (25) years. The period of twenty-five (25) years commenced: on July 1, 1949 in respect to Hurricane Creek, Jones Mills, Trout-

dale, and McCook; on April 1, 1949 in respect to Grand Rapids; and on January 1, 1950 in respect to Phoenix.

Formal leases of these properties are in the course of preparation. The formal leases will contain provisions which have been discussed by representatives of the two Companies. These provisions concern, among other things, the reduction of rentals in the event of idle status under certain circumstances, adjustment of rentals under certain circumstances, maintenance of the properties, payment of taxes, insurance coverage and the payability of the proceeds in the event of loss, capital additions, conditions of the several properties, the assignability of this lease and subletting of the premises and restrictions thereon, and other rights and obligations of Metals and of Reynolds Aluminum Company respectively.

Until the formal leases are ready for signatures, this document as accepted by you at the bottom of this page, and the several letters from the General Services Administration to Reynolds Aluminum Company which Metals has signed or agreed to, will evidence the leases of the six (6) plants.

REYNOLDS ALUMINUM COMPANY

By: /s/ C. E. Coghill

Treasurer

Accepted for and on behalf of Reynolds Metals Company this ..... day of March, 1950.

By: /s/ M. W. Henry
Vice-President

The formal leases contemplated in said letter of March 3, 1950 have never been entered into by and between the two companies. The said letter of March 3, 1950 was amended on 2/20/51 in respects not material here and as so amended remains and is in effect at the present time.

II.

Each party reserves the right to contend that all or any part of said stipulated facts are not material or relevant, and said stipulated facts are to be considered only if and to the extent that they are deemed by the court to be material.

III.

Plaintiff and defendants stipulate that this cause may be considered and tried on the basis of the pleadings and this stipulation, and plaintiff and defendants expressly waive the calling of any witnesses and the production of any further testimony or evidence. Each party expressly reserves the right to appeal from any judgment, order or decree of the trial court, or from any portion thereof.

APPENDIX B

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause having duly come on for trial on the 11th and 12th days of January, 1954, before the undersigned, Judge of this Court, sitting without a jury, plaintiff appearing by Allan Hart, of Pendergrass, Spackman and Bullivant, and defendants appearing by George D. Leonard on behalf of John B. McCourt, District Attorney, and the cause having been duly tried upon the pleadings and stipulations of the parties without the introduction of any evidence, oral arguments and written memorandum briefs having been submitted by the parties, and the court having made a memorandum opinion on March 15, 1954, and having heard further oral arguments on the 15th day of April, 1954, and being fully advised in the premises, now makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

I.

Plaintiff is a Delaware corporation and is authorized to transact business in the State of Oregon.

II.

The property in question consists of machinery and equipment used in the manufacture of raw or partially manufactured products located in the

Troutdale Aluminum Plant situated near Troutdale in Multnomah County.

III.

Legal title to the Troutdale Plant including said machinery and equipment has been in the United States or its agencies since about 1942 until June 29, 1950, when the United States transferred said plant including the property in question to the plaintiff by deed and bill of sale.

IV.

In 1946, Reynolds Metals Company, of which this plaintiff is a wholly-owned subsidiary, leased said plant including the machinery and equipment in question from the Reconstruction Finance Corporation, an agency of the United States government, and since said time has continued in possession of and to operate said plant as an aluminum reduction plant.

V.

On December 21, 1949, plaintiff and Reynolds Metals Co. accepted and signed an agreement termed a "Letter of Intent" addressed to them from the United States of America whereby the United States government agreed to sell and plaintiff agreed to buy said Troutdale plant, including the property in question together with three other aluminum plants located in other states for an agreed purchase price of $50,081,958.00. The agreement also provided for

a down payment of $2,581,958.00 upon execution of the Letter of Intent, and said down payment was made by plaintiff to the United States prior to January 1, 1950, in the manner specified in the stipulation filed herein and dated May 11, 1953, the balance of the purchase price to be paid in annual installments commencing July 1, 1950, and ending July 1, 1974. The said Letter of Intent entitled plaintiff to rescind if agreement was not reached within a stated time on a "National Security Clause", or if the government's titles to the four plants being purchased were found not to be marketable and if the government failed to cure the defect or defects therein. By an amendatory letter from the United States to plaintiff and Reynolds Metals Company dated December 20, 1949, and accepted December 21, 1949, by plaintiff and Reynolds Metals Company said Letter of Intent was amended so as to provide that upon the acceptance of said Letter of Intent the above-mentioned lease was cancelled and terminated except as to the rights and obligations specifically reserved. A copy of the Letter of Intent together with the amendatory letters thereto is attached to the complaint herein as Exhibit A and by this reference is hereby incorporated and made a part of these Findings as if fully set forth herein.

VI.

Plaintiff and the government reached an agreement on a "National Security Clause" on May 4,

1950; and the government's titles to the four plants being purchased were determined to be marketable on the following dates:

Plant	Date Final Report Received
Troutdale	April 21, 1950
McCook	May 12, 1950
Jones Mills	June 2, 1950
Hurricane Creek	June 6, 1950

VII.

On June 29, 1950, the United States executed and delivered a deed and bill of sale conveying and transferring to plaintiff the Troutdale Aluminum plant, including the machinery and equipment in question; and on the same day, plaintiff executed and delivered the promissory note for the unpaid balance of the purchase price, and the purchase money mortgage, in accordance with the provisions of the Letter of Intent.

VIII.

The machinery and equipment in question was omitted from the assessment roll when Multnomah County prepared said roll for the 1950-51 personal property taxes. On March 20, 1951, defendant, Schrunk, as tax collector of Multnomah County, notified plaintiff that he was proposing to add the machinery and equipment in question to the 1950-

51 tax roll of Multnomah County at an assessed valuation of $3,410,000.00. After plaintiff appeared and made showing why such property should not be added to the 1950-51 tax roll, the defendant sheriff, on November 8, 1951, added said machinery and equipment to the 1950-51 tax roll at an assessed valuation of $3,410,000.00, and duly assessed a personal property tax on said machinery and equipment to the plaintiff in the amount of $199,144.00. On said latter date, the defendant, Terry D. Schrunk, duly issued his warrant for the sum of $199,144.00 and served the same on the plaintiff. Defendant Schrunk then intended to immediately file the warrant with defendant Cohn, County Clerk of Multnomah County, whose duty it would be to enter such warrant so filed in the judgment docket of said county.

IX.

No part of the tax so assessed as hereinbefore set forth has been paid.

CONCLUSIONS OF LAW

I.

Plaintiff was in possession of the machinery and equipment in question on January 1, 1950 under the Letter of Intent accepted by plaintiff on December 21, 1949, together with the amendatory letters thereto.

II.

On January 1, 1950, the plaintiff held equitable title and the beneficial interest in the machinery and equipment in question and the United States of America held legal title thereto in trust for the plaintiff as security for payment of the balance of the purchase price by virtue of the Letter of Intent accepted by plaintiff on December 21, 1949, together with the amendatory letters thereto.

III.

The machinery and equipment in question was not immune or exempt from taxation to the plaintiff by Multnomah County, Oregon, on January 1, 1950.

IV.

The assessment of the personal property tax for 1950-51 on the machinery and equipment in question was legal and valid.

Dated this 27th day of April, 1954.

Lowell Mundorff

Judge